



The Comptroller General
of the United States

Washington, D.C. 20548

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ANI

Decision

Matter of: Marc D. Theriault - Highest Previous Rate -
Prospective Pay Rate

File: B-225305

Date: June 24, 1987

DIGEST

An employee was transferred from a position with the United States Army in Panama, in grade CZ-6, step 2 (\$12,612), to a position with the United States Navy in Florida, in grade GS-6, step 1 (\$16,040). The employee asserts his pay should have been set at step 2 of his new grade, contending that Panama Area Personnel Board had set a higher pay scale in 1982 to become fully effective over 21 months beginning in January 1983. While the final part of that pay increase did not become effective until shortly after his transfer in September 1985, he claims credit for it for pay-setting purposes under highest previous rate rule. The claim is denied. Use of the highest previous rate rule applies only to the highest rate of basic pay actually received, not a prospective rate of pay an employee might have received had he remained in his former position. See Banaag S. Novicio, 64 Comp. Gen. 17 (1984).

DECISION

This decision is in response to a request from the Employment Director, Consolidated Civilian Personnel Office, Jacksonville Naval Air Station. It concerns the entitlement of one of its employees to have his rate of basic pay set at step 2 of grade GS-6, rather than the pay of step 1 of that grade upon transfer in September 1985. We conclude that he was only entitled to the pay of step 1, for the following reasons.

BACKGROUND

Mr. Marc D. Theriault was an employee of the United States Army in the Republic of Panama, performing the duties of an Emergency Medical Technician, grade CZ-699-6, step 2 (\$12,612 per annum). On September 1, 1985, he received a lateral transfer to the Mayport Branch Clinic, Naval

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Hospital, Jacksonville, Florida, to the position of Industrial Hygiene Technician, grade GS-699-6, with basic pay set at step 1 (\$16,040 per annum). Due to administrative error, Mr. Theriault's pay was adjusted to step 2 of that grade on November 6, 1985. The error was discovered and corrected on August 14, 1986, and his pay rate was returned to grade GS-6, step 1.1/ Effective August 31, 1986, Mr. Theriault received his within grade increase to step 2.

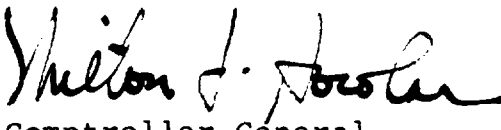
Mr. Theriault contends that his pay rate on transfer should have been established at grade GS-6, step 2, based on the highest previous rate rule. He says that in September 1982, while he was employed by the Army in Panama, the Panama Area Personnel Board approved a plan whereby the then-existing pay scale was to be increased by 100 percent over a 21-month period. In January 1983, it was increased by 20 percent and in January 1984, by an additional 20 percent. The final 60 percent was given on September 29, 1985, nearly 1 month after his transfer. It is his view that even though he was transferred on September 1, 1985, he should be entitled to credit for that last pay increase for pay-setting purposes since he could have worked until that date and then transferred.

RULING

The establishment of an employee's rate of pay upon change of position or type of appointment is governed by regulations issued by the Office of Personnel Management pursuant to 5 U.S.C. § 5334 (1982) and published as 5 C.F.R. Part 531 (1986). Subsection 531.203(c) of those regulations authorizes, generally, that the salary to be paid an employee on transfer may be established at any rate of the employee's current grade which does not exceed the highest previous rate of pay an employee received prior to transfer. An exception to that rule is that if the highest previous rate of basic pay falls below step 1 of the employee's current grade, his current rate of pay is to be set at step 1 of the grade.

1/ The overpayment was waived by our Claims Group by letter, Z-2879561, January 21, 1987.

We have held that the highest previous rate rule applies only to the salary previously earned by the employee. See Banaag S. Novicio, 64 Comp. Gen. 17 (1984) and decisions cited. A prospective rate of pay that an employee might become entitled to receive had he remained in his former position is not salary previously earned. Since Mr. Theriault's pay rate in his new position, which was set at step 1 of grade GS-6, exceeded the highest previous rate of pay he actually received while employed by the Army in Panama, the agency's action is correct.


for Comptroller General
of the United States